

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act:
Competitive Bidding

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) PP Docket No. 93-253
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COMMENTS

**THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.**

Paul J. Sinderbrand
Dawn G. Alexander
Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006-4103
(202) 835-8292

Its Attorneys

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The Wireless Cable Association International, Inc. ("WCAI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments in response to the *Notice of Proposed Rule Making* ("NPRM") commencing this proceeding.

I. INTRODUCTION AND EXECUTIVE SUMMARY.

In passing the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), Congress amended the Communications Act of 1934 by adding a new Section 309(j) that authorizes the Commission to employ competitive bidding procedures to choose from among two or more mutually-exclusive accepted applications for any initial license that will be employed to provide service to subscribers who pay compensation to the licensee.¹ With the *NPRM*, the Commission proposes to adopt new rules implementing Section 309(j).

WCAI, the trade association of the wireless cable industry, is vitally interested in the outcome of this proceeding. As the Commission is well aware, wireless cable systems depend upon the use of spectrum allocated to Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") to distribute multichannel video programming

¹See Pub. Law 103-66, 103rd Cong., 107 Stat. 312, 388.

services to subscribers.² It is a matter of record before the Commission that regulatory delays in the licensing of MDS and ITFS facilities have significantly hampered the emergence of wireless cable as an effective competitor to the entrenched cable monopoly.³ The Budget Act directs the Commission to structure its competitive bidding rules in a manner that promotes the development and rapid deployment of new technologies such as wireless cable.⁴ Whether the rules promulgated by the Commission to implement the Budget Act accomplish Congress' goal of expediting the licensing of wireless cable spectrum will have a pivotal impact on the ability of the wireless cable industry to meet consumer demand for competitive multichannel video programming services.

As a general proposition, WCAI applauds the proposals advanced in the *NPRM*. However, care must be taken to assure that the final rules promote the accumulation of channels by *bona fide* wireless cable operators and end the rampant speculation and greenmail that have wreaked havoc on the wireless cable industry. While virtually all of the MDS

²See, e.g. *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410 (1990), *on recon.* 6 FCC Rcd 6764 (1991); *Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444 (1993); *Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service*, 8 FCC Rcd 2828 (1993).

³See *id.*; *Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service*, 8 FCC Rcd 1275 (1993).

⁴See 47 U.S.C. § 309(j)(3)(A).

channels have been licensed at one time or another in most markets of any size, a substantial number of MDS licenses have been forfeited over the years.⁵ Because the Commission has generally barred the filing of applications for new MDS stations in all but the most rural areas since 1983, the spectrum covered by those forfeited licenses presently is unavailable for use in wireless cable systems.

Fortunately for wireless cable operators engaged in accumulating the critical mass of channels demanded by consumers, the new MDS cut-off rule embodied in Section 21.914 of the Commission's Rules, coupled with recent changes to the Part 21 rules governing the settlement of mutually-exclusive MDS applications, should minimize the instances in which mutually-exclusive MDS applications are filed once the current MDS application freeze is

⁵WCAI attributes this phenomenon to the limited demand for MDS transmission service caused by regulatory and business barriers to entry faced by prospective wireless cable operators, the fact that many (but certainly not all) of the participants in MDS lotteries were speculators that had no real intent of developing systems, and the refusal of the Commission to vigorously enforce its real-party-in-interest and one-to-a-market rules.

lifted.⁶ The exception, however, may come on the day when the Commission lifts its long-standing freeze on the filing of applications for new MDS facilities.

The Commission currently is in the midst of a proceeding exploring the most efficacious mechanism for lifting the MDS filing freeze.⁷ One option advanced by the Commission is to initially limit applications to existing licensees that are prepared to expand their offerings immediately upon receiving additional authorizations.⁸ Every commenting party addressing this issue supported in some fashion the establishment of a priority period during which only the wireless cable operator in a given market would be entitled to apply

⁶Under Section 21.914, an application for a new MDS station is cut-off from mutually-exclusive applications at the end of the day on which the application is filed. This rule was adopted as part of the Commission's effort to eliminate speculative and greenmail applications. See, e.g. *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 6 FCC Rcd 6764, 6776-80 (1991). Section 21.914 proved successful in preventing strike applications filed for greenmail purposes. However, Section 21.914 had the unintended consequence of aiding the application mills. Mills continued to generate hundreds of applications for the same license, filing all of the applications on the same day. Section 21.914 afforded the mills an opportunity to promise their victims that all of the applicants for the channel would be affiliates of the mill, that a settlement group would be formed among all of those applicants and that each applicant therefore would be assured of an interest in the license. In its *Report and Order* in PR Docket No. 92-80 earlier this year, the Commission eliminated this opportunity for the application mills by barring the formation of settlement groups by mutually-exclusive MDS applicants. *Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444, 1446-47 (1993). Now, it will only be through happenstance that mutually-exclusive applications are filed on the same day.

⁷"MDS/MMDS Applications Filing Freeze," *Public Notice*, (rel. July 28, 1993).

⁸See *id.*

for unlicensed spectrum in that market.⁹ Unless that proposal is adopted, the Commission will likely be faced with a flood of mutually-exclusive applications on the first day the freeze is lifted as speculators vie for the MDS channels that the local wireless cable operator needs in order to provide a viable service to the public.

WCAI is hardly alone in its concern that MDS auctions could lead to rampant speculation and abuse. The National Association of Securities Administrators has already warned that:

Much of the current debate about selling off a major section of the radio spectrum has focused on the issue of how the federal government might best wring every possible dollar of revenue from the process. However, the outcome may end up having enormous (even if entirely unintended) consequences for consumers; **this new federal licensing process could serve as the biggest bonanza to date for con artists and other sharp operators** who will waste no time in gearing up a new and even bigger generation of application mills. It is difficult to imagine that the same individuals who have seized upon far more modest opportunities for illicit profit in the cellular telephone and wireless cable lotteries would pass up the enormous -- though

⁹See Comments of Wireless Cable Ass'n, Int'l, at 16-17 (filed Aug. 30, 1993); Comments of WJB-TV Limited Partnership (filed Aug. 30, 1993); Comments of the Coalition of Wireless Cable Operators, at 5-9 (filed Aug. 30, 1993); Comments of the Wireless Cable Coalition, at 2-3 (filed Aug. 30, 1993); Comments of Lawrence Behr Associates, Inc., at 2-3 (filed Aug. 30, 1993); Comments of Sioux Valley Rural Television, Inc. (filed Aug. 23, 1993). For the reasons set forth by the Commission in Paragraph 73 of the *NPRM*, WCAI questions whether race- or gender-conscious preferences for auction participants can withstand judicial scrutiny. Therefore, WCAI recommends that the Commission only establish preferential treatment in auctions for small businesses, which should satisfy Congressional concerns that minorities and women can secure an appropriate number of licenses. In the case of MDS, where there may only be a single license still available in a given market, this preferential treatment should be limited to a deferred payment schedule.

no less fraudulent and abusive -- potential that privatizing the radio spectrum will hold for them.¹⁰

In applying Section 309(j) to the spectrum utilized by wireless cable operators, the Commission must take care to avoid the adoption of rules that will inadvertently frustrate the ability of legitimate wireless cable system operators to accumulate the channel capacity necessary to launch new wireless cable systems or add needed channel capacity to existing systems. Since 1990, it has been the Commission's goal to promote efforts by wireless cable operators to rapidly accumulate the critical mass of channels necessary to provide a viable multichannel video programming distribution service, while deterring applications filed purely for speculation or greenmail.¹¹ That goal should remain paramount as the Commission implements Section 309(j).

II. DISCUSSION.

A. The Commission Has Properly Decided Not To Utilize Auctions To Select From Among Mutually-Exclusive ITFS Applicants.

Recognizing from Section 309(j)(2) that Congress intended for competitive bidding to be employed only to select from among mutually-exclusive applications for licenses that would be primarily employed to provide a service to fee-paying subscribers, the Commission

¹⁰“‘Wireless Cable’ TV Lottery Application Mills,” CCH NASAA Reports, ¶ 8225 (April 1992)

¹¹*See, supra* note 2.

has proposed to exempt ITFS applications from its auction proposal.¹² WCAI agrees with the Commission that Congress intended to exempt ITFS applications from auctions.

Indeed, in passing the Budget Act, Congress made clear that although many ITFS licensees have elected to lease excess capacity to wireless cable operators, Congress did not intend for the Commission to utilize comparative bidding to select from among mutually-exclusive applications for ITFS authorizations. The Conference Report accompanying the Budget Act states that:

The Conferees note that the principal use of licenses in the Instructional Television Fixed Service is the provision of educational television programming services to public school systems, parochial schools and other educational institutions. The fact that the Commission's rules permit licensees in this service to allow MMDS operators to utilize these frequencies when they are not needed for their principal use will not alter the manner by which these licenses will be issued as the result of the enactment of this legislation. Similarly, although such licensees are permitted to receive payments from such MMDS operators, such payments are not to be construed by the Commission to indicate that ITFS licensees are receiving compensation from "subscribers" as that term is used in section 309(j)(2).¹³

In light of this clear statement of Congressional intent, the Commission's proposal to exempt ITFS applications from competitive bidding is beyond reproach.

¹²See *NPRM*, at ¶ 23 n. 5.

¹³Conference Report, at 481-4821.

B. The Commission Should Employ Procedures For Selecting From Among Mutually-Exclusive Applications For New MDS Facilities Filed Prior To July 26, 1993 That Will Expedite The Issuance Of Licenses And Avoid Disruption In Wireless Cable System Planning.

The *NPRM* proposes that lotteries be employed to select from among mutually-exclusive single channel and multichannel MDS applications pending prior to July 23, 1993.¹⁴ The Commission reasons that these applications have already been subject to processing delays, and that "to auction those licenses would further delay delivery of MDS service to the public because the auction rules will not be in effect for several months."¹⁵ If, as the *NPRM* implies, the Commission is committed to expeditiously conducting lotteries to select from among mutually-exclusive MDS applications while the *NPRM* is pending, WCAI wholeheartedly supports the Commission's proposal to exempt all pre-July 26, 1993 applications from competitive bidding.

Based on discussions with the staff of the Domestic Radio Branch and a review of the Commission's informal inventory of pending MDS applications, WCAI understands that lotteries have been conducted for virtually every market where there are serious efforts to develop a wireless cable system. Most of the remaining mutually-exclusive MDS applications that have not participated in a lottery are the apparent handiwork of application mills, and are either unacceptable for filing or propose facilities in ultra-rural areas incapable of supporting a profitable wireless cable system.

¹⁴See *NPRM*, at ¶¶ 148-151.

¹⁵*Id.* at ¶ 149.

While WCAI seriously doubts that many of these remaining applications will ultimately result in the construction of wireless cable systems, it is nonetheless essential that the Commission process these applications as rapidly as possible. As the Commission has recognized, all of the facilities being employed by a wireless cable system operator must be co-located at a single site and operate utilizing a single set of technical criteria.¹⁶ Under Section 21.902 of the Commission's Rules, current MDS licensees co-locating their facilities must provide the Commission with analyses of the potential for harmful electrical interference to previously proposed stations, including those proposed in the mill-generated applications. The pendency of thousands of these mill-generated applications has greatly complicated co-location efforts, often making it impossible for a wireless cable system developer to accumulate sufficient channel capacity at a single site. In deciding whether to employ random selection or competitive bidding to select from among these pending, pre-July 26, 1993 mutually-exclusive MDS applications, the Commission should be guided by the need to process these applications as rapidly as possible so as to simplify co-location efforts by *bona fide* wireless cable system developers. If lotteries are the most expedient manner of processing these pending applications, then the Commission should employ lotteries *post haste*.

¹⁶*Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multichannel Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6472, 6474 (1990).

Whichever approach the Commission generally adopts with respect to MDS applications filed prior to July 26, 1993, it is essential that any application that has already been chosen as the tentative selectee in a lottery, or that was designated as the surviving application in a full market settlement after being designated for lottery, retain its current status. Historically, selection as the tentative selectee in a lottery, or the establishment of a full settlement, has been tantamount to issuance of an MDS conditional license. As a matter of course, wireless cable operators in good faith enter into lease agreements with tentative selectees and settlement groups and, in reliance on those agreements, expend significant time and effort to integrate the proposed facilities into operating wireless cable systems. It would be inconsistent with Section 309(j)(3)(A)'s mandate that the auction system promote the rapid deployment of new technologies to void the results of pre-July 26, 1993 lotteries or settlement agreements and force the affected applicants to participate in auctions at some undetermined time in the future.

C. The Commission Should Retain The Current Procedures Governing The Filing of MDS Applications.

In proposing procedures to govern the filing of applications for services subject to auctions, the Commission has suggested that it would issue a public notice of a filing window or cut-off date for a particular license and applicants then would submit responsive short-form and long-form applications.¹⁷ While that approach may work well for some services, it is inappropriate for the MDS.

¹⁷See *NPRM*, at ¶ 97.

The flaw in the Commission's proposal is that it assumes that licensed service areas are designated in such a manner that the Commission can, on its own, announce the availability of a license opportunity. That is not true with respect to the MDS. Unlike services where spectrum is reused at multiple sites by licensees and licenses authorize service within a geographic area (such as a Metropolitan Statistical Area, a Cellular Service Area or a Rand-McNally trading area), MDS spectrum is not generally reused by licensees at multiple transmit sites and service areas are determined based on the technical configuration of the particular station. Once the freeze is lifted, it is presumed that under the current version of Sections 21.901 and 21.902 of the Commission's Rules it will be possible for an application to propose a new MDS station at any site at any time (subject to the proposed operator's priority period), so long as the proposed facility does not cause harmful interference within the protected service area of any previously proposed station.¹⁸

Although it may be appropriate to revisit the self-defined service area approach to licensing as the Commission revises its rules to accommodate the introduction of digital technology into the wireless cable industry, the current approach of permitting applicants to self-define MDS service areas has generally served the industry well. Indeed, earlier this year, the Commission rejected a staff proposal in PR Docket No. 92-80 to substitute MDS

¹⁸The protected service area for an MDS station consists of 710 square miles around the transmission antenna, with the exact shape of the area dependent upon the radiation pattern emanating from the transmission antenna. While WCAI has spearheaded an effort to have the protected service area enlarged from 710 square miles to a larger figure (which will depend upon the equivalent isotropic radiated power of the station), it has continuously supported the rule defining the protected service area based on the particular station's technical design.

licensing based on Metropolitan Statistical Areas for the current system of self-defined service areas based on station design. The Commission did so in response to overwhelming opposition from wireless cable operators, who demonstrated the practical difficulties of converting a service in which wireless cable headends have been located without regard to geographic boundaries to a licensing system based on geographic boundaries.

The Commission should not reverse course here. Rather, once the freeze is listed, the Commission should continue to permit MDS applicants to file at any time (subject to compliance with a priority period for existing operators), and only conduct auctions where mutually-exclusive applications are filed within the cut-off period established under Section 21.914 of the Commission's Rules.

D. Although Oral Auctions Should Generally Be Employed To Award MDS Licenses, Sealed Bids Should Be Employed When Necessary To Promote The Efficient Aggregation Of Licenses Or Simplify The Issuance Of Licenses.

In the *NPRM*, the Commission solicits comment on which method for conducting auctions should be implemented. For the reasons cited by the Commission in Paragraph 37 of the *NPRM*, WCAI generally endorses the use of oral bidding to select from among mutually-exclusive applications for initial MDS authorizations. However, WCAI believes that in two circumstances, sealed bids should be employed.

1. The Commission Should Permit Combinatorial Bidding For MDS Licenses And Utilize Sealed Bids In Conjunction With Oral Bidding.

In implementing Section 309, the Commission has made clear that a primary objective is "to implement an auction system that facilitates the efficient aggregation of licenses where

appropriate.”¹⁹ That is also a matter of prime concern to wireless cable operators, who face the herculean task of accumulating seven separate MDS licenses for the thirteen MDS channels in a given market (along with entering into leases for twenty ITFS channels).²⁰ As a result, WCAI strongly supports the Commission’s proposal to permit combinatorial bidding when multiple licenses in a given market area are available.²¹

The *NPRM* establishes the major public interest benefits that will accrue from permitting combinatorial bidding -- more rapid introduction of service to the public, the promotion of higher valued services, reduced costs to service providers and increased revenues to the public.²² This is particularly true with respect to wireless cable, where greenmailers have secured the rights to a few channels in a given market and then, after delaying the introduction of service to the public, extracted substantial payments from the company attempting to develop a wireless cable system to serve the market. Although combinatorial bidding alone will not necessarily stop such conduct, it should serve as a deterrent.

¹⁹See *NPRM* at ¶35.

²⁰Although the Commission has eliminated rules that had formerly barred a single entity from being the licensee for all of the MDS channels in a given area, the Commission still separately licenses: (1) Channel 1, (2) Channel 2, (3) the four E Group channels, (4) the four F Group channels, (5) Channel H1, (6) Channel H2, and (7) Channel H3.

²¹Quite frankly, because most MDS channels in most markets have already been licensed, it will be relatively rare that mutually-exclusive applications for multiple licenses in a market will be filed within the Section 21.914 cut-off period. Nonetheless, the Commission should provide for combinatorial bidding so that in such cases the ability of the wireless cable operator to accumulate channels will be enhanced.

²²See *NPRM*, at ¶ 35.

The Commission has tentatively concluded that when combinatorial bidding is permitted, the Commission should require the submission of sealed bids for groups of licenses and then conduct oral auctions for individual licenses, rather than *vice versa*.²³ WCAI disagrees, at least with respect to combinatorial bidding for MDS authorizations. As the Commission recognizes in the *NPRM*, the alternative of first auctioning licenses individually, announcing the results, and then offering licenses in groups biases the outcome in favor of group licenses.²⁴ Unlike the situation with respect to Personal Communications Services (where it is uncertain how much spectrum an operator will require in order to provide a commercially viable service), it is crystal clear that a wireless cable operator must accumulate access to as many of the MDS channels in a given market as possible. Thus, an auction mechanism that promotes the issuance of group MDS licenses is preferable to one that continues the current Balkanization of spectrum among multiple licensees.

2. Sealed Bids Should Be Employed To Expedite The Issuance Of Licenses Among Applicants Filing On The First Day The MDS Filing Freeze Is Lifted And Thereafter Whenever "Daisy Chains" Occur.

Unless the Commission implements the proposals before it to afford each wireless cable operator a preference in securing unlicensed MDS channels in its service area, it is inevitable that a flood of mutually-exclusive applications, many part of "daisy chains," will be filed on the first day that the Commission lifts its current freeze on the filing of

²³See *id.* at ¶ 58-59.

²⁴See *id.* at ¶ 59.

applications for new MDS facilities. Sealed bids will prove an effective mechanism for quickly licensing the maximum number of facilities proposed on the first day the freeze is lifted and thereafter whenever daisy chains occur.

Although the wireless cable industry has realized significant benefits from the Commission's policy of permitting applicants to define their own service areas based on the technical characteristics of their systems, a drawback of that policy is that it will make it somewhat more difficult for the Commission to determine which MDS applications filed when the freeze is lifted are mutually exclusive. For administrative convenience, WCAI proposes that all applications filed on the first day the freeze is lifted be considered to be a daisy chain for processing purposes, and that sealed bids be employed to maximize the number of applications that can be granted through a single auction.

The benefits of generally utilizing sealed bids to award licenses among daisy chained applications can best be illustrated by example. Assume a daisy chain where Application A is mutually exclusive with Application B, Application B is mutually exclusive with Application C, Application C is mutually exclusive with Application D, but Application A is not mutually exclusive with Applications C or D, Application B is not mutually exclusive with Application D, Application C is not mutually exclusive with Application A, and Application D is not mutually exclusive with Applications A or B. In order to expedite the initiation of service to the public, the Commission's competitive bidding system should permit the simultaneous licensing of as many of these applications as possible.

WCAI has designed a system, based on the Private Radio Bureau's successful lottery design for 220-222 MHz local commercial applications, to accomplish this goal. In that situation, the Bureau used random selection techniques to rank order all of the applicants for 220-222 MHz local commercial applications. The staff then reviewed each application in order, granting any that was not mutually exclusive than a higher ranking granted application. Under WCAI's variant for MDS auctions, the staff would rank order all of the applicants in descending order of bid. The application of the high bidder would be granted. The application of the second highest bidder would then be evaluated to determine whether it is mutually exclusive with the high bidder's: if it is, the second highest bidder's application would be dismissed; if not, the second highest bidder's application would be granted. The application of the third highest bidder would then be evaluated to determine whether it is mutually exclusive with the granted application of any higher bidder: if it is, the third highest bidder's application would be dismissed; if not, the third highest bidder's application would be granted. And so on throughout the chain. In this manner, the Commission can utilize one auction proceeding to award the maximum number of MDS licenses quickly, while assuring that those that value the spectrum most highly secure authorizations.

E. The Commission Should Adopt Safeguards To Assure That MDS Facilities Are Rapidly Constructed And Used To Serve The Public.

The *NPRM* proposes a variety of safeguards to assure the integrity of the auction process. WCAI believes that, if carefully tailored, safeguards can promote the rapid deployment of new MDS facilities in wireless cable systems. However, the Commission must

take care that safeguards not prevent legitimate business transactions that benefit wireless cable operators in accumulating the channel capacity necessary to provide a viable service to the public.

*1. The Commission Should Retain Construction Requirements
In Order To Assure The Rapid Introduction Of MDS Service.*

The Budget Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."²⁵ WCAI believes that it is essential that the current twelve month construction period for MDS authorizations be retained for spectrum licensed by competitive bidding, and that the Commission adopt a policy of granting extensions of time to construct stations licensed through auctions only in extraordinary circumstances.

The *NPRM* suggests that construction periods may not be necessary for auctioned licenses, given the costs associated with not exploiting a license that was purchased.²⁶ The Commission may well be correct as a matter of economic theory, assuming that the winning bidder correctly evaluates the costs and benefits of warehousing spectrum. However, based on its experience under the current lottery system, WCAI fears that the applications mills and scam artists will bring into the auction marketplace unsophisticated individuals that overbid

²⁵47 U.S.C. § 309(j)(4)(B).

²⁶See *NPRM*, at ¶ 91.

for MDS licenses in the mistaken view that a single license will enable entry into the wireless cable business. If WCAI's fears come true, then such individuals (with their unrealistic vision of the value of a license) may be unwilling to transfer their authorization at a reasonable price until faced with an imminent loss of license due to non-construction. Absent a construction deadline, these unsophisticated individuals may warehouse this spectrum indefinitely, holding out for what they have been erroneously led to believe is a fair price.

*2. The Commission Should Not Restrict Transfers Of
Authorizations Acquired Through Competitive Bidding.*

The *NPRM* solicits comment on a variety of mechanisms to prevent unjust enrichment when authorizations acquired through competitive bidding are transferred. WCAI urges the Commission to take care that whatever restrictions are imposed not prevent legitimate business transactions by wireless cable system operators. More specifically, WCAI is concerned that the Commission may inadvertently bar two types of transactions that are critical to the growth of the wireless cable industry.

First, the Commission should permit auction winners to freely assign their authorizations to wireless cable operators engaged in the process of accumulating channel capacity. The Commission has previously acknowledged that requiring wireless cable system operators to lease their channel capacity from MDS license holders is inefficient.²⁷

²⁷See, e.g. *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410 (1990).

Acquisition of MDS licenses is critical for the wireless cable operator to attract capital and reduce costs, and should not be hampered by unnecessary restrictions on license assignment.

Second, the Commission should freely permit both assignments of licenses acquired by auction and transfers of control over licensees that secured authorizations through competitive bidding when such assignments or transfers are in connection with the equity financing or sale of a wireless cable system. Whatever merit limitations on assignment or transfer may have, they should not restrict these sorts of efficient market transactions that are unrelated to speculation.

III. CONCLUSION

Once again, the Commission is to be applauded for its recognition that whatever rules are adopted to govern competitive bidding, the efficient aggregation of licenses must be promoted where appropriate. By retaining the recent revisions to Part 21 designed to deter the filing of speculative and greenmail applications and properly crafting auction rules that accommodate the need of wireless cable operators to accumulate multiple MDS licenses, the Commission can accelerate the introduction to the public of new or improved wireless cable services.

Respectfully submitted,

THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

By:



Paul J. Sinderbrand
Dawn G. Alexander

Sinderbrand & Alexander
888 Sixteenth Street, N.W
Suite 610
Washington, D.C. 20006-4103
(202) 835-8292

Its Attorneys

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